Fiscal Countdown

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Editor

The Fiscal Countdown, a monthly summary of international tax news, provides you with regular insights into the introduction of the OECD's BEPS initiative and the ongoing international tax reforms.

This seventy seventh edition deals with the new measures published in September 2022 by the OECD, the EU and in 12 countries: Angola, Bulgaria, Denmark, France, Germany, Malta, Ireland, Poland, Saudi Arabia, Switzerland, United Kingdom, and United States.

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OECD

According to a new OECD Report, “Tax Policy Reforms 2022”, tax policy is playing a critical role as countries seek to promote economic recovery from the COVID-19 pandemic and respond to the impact of rapid increases in energy prices, according to a new OECD report. The 2022 Edition describes recent tax reforms across 71 countries and jurisdictions, including all OECD members and selected members of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting. The report finds that tax reforms - notably reductions in taxes on labor and more generous corporate tax incentives - have been among the key policy tools that countries have used to stimulate growth and promote economic recovery from the pandemic. As energy prices rose steeply from the second half of 2021, countries moved quickly to shield households and businesses by providing temporary fiscal support - including tax cuts - and by tapering existing stimulus measures that could add to inflation. “Recent tax reforms have been targeted at stimulating economic recovery from COVID-19, while countries with the greatest fiscal space have been providing more generous tax benefits for longer periods of time,” said Pascal Saint-Amans, Director of the OECD Centre for Tax Policy and Administration. “Countries have also used tax policy as one of their main tools in responding to rapid rises in energy prices.” Personal income taxes and social security contributions were reduced in 2021 in almost all countries covered in the report, with most reductions targeted at lower-income households to support employment and provide in-work benefits. Many countries also increased corporate tax incentives to stimulate investment and innovation.

On 12 September 2022, the OECD held a public consultation meeting on the Progress Report on Amount A of Pillar One, which was released by the OECD Secretariat on 11 July 2022 in connection with the ongoing BEPS 2.0 project. During the public consultation, three panels discussed key elements of the proposed design for Amount A. The first panel focused on several elements of the Marketing and Distribution profits Safe Harbor (MDSH), such as the treatment of withholding taxes, key undefined aspects of the MDSH formula (“Y” and the “multiplier”), and the potential alternatives or supplements to the MDSH. The second panel discussed the elimination of double taxation (EODT), the results of modeling by businesses, the method of EODT and the use of Return on Depreciation and Payroll (RODP) to identify the relieving jurisdictions. Finally, the following issues were discussed during the third panel: scope, revenue sourcing, tax base and unilateral measures. At the consultation’s closing, the Head of the International Co-operation and Tax Administration division at the OECD, Achim Pross, indicated that the written submissions and discussions were extremely rich. He indicated that more work is needed on the MDSH, including the need to do more to minimize distortive results. On revenue sourcing, he said it was a journey from the extreme transactional approach in the initial consultation document to the Progress Report, noting that the work has come a long way. However, there still is a long way to go. He stressed the importance of the treatment of unilateral measures and also the need for a workable certainty system. He expressed the view that to stabilize the system, Pillar One needs to be beneficial on a widespread basis. Finally, he noted the role of Pillar One in alleviating trade tensions.

On 13 September 2022, the OECD released the tenth batch of Stage 2 peer review reports under BEPS Action 14 (dispute resolution). This report covered the implementation by Aruba, Bahrain, Barbados, Gibraltar, Greenland, Kazakhstan, Oman, Qatar, Saint Kitts and Nevis, Thailand, Trinidad and Tobago, United Arab Emirates (UAE) and Vietnam (the assessed jurisdictions). The Stage 2 reports evaluate the progress made by the assessed jurisdictions in addressing any of the recommendations that resulted from the Stage 1 peer review reports that were released on 16 February 2021. The results of the reports generally show positive changes across the assessed jurisdictions, although not all show the same level of progress. According to the reports, Aruba, Bahrain, Gibraltar, Oman, Qatar, and the UAE have addressed most or all of the deficiencies identified in the Stage 1 peer review. Barbados, Greenland, Saint Kitts and Nevis, Thailand, Trinidad and Tobago, and Vietnam addressed some of the identified deficiencies. Kazakhstan has solved none of the identified deficiencies and existing problems have been seen to be exacerbated in Stage 2. With this, the Action 14 peer review process for all reviewed jurisdictions under the current Assessment Methodology has been completed.

Effective taxation of large businesses would benefit from increased efforts to build trust and improve communication between tax administrations and Multinational Enterprises (MNEs), according to a new report from the OECD “Tax Morale II: Building Trust between Tax Administrations and Large Businesses”. It reflects the results of a wide-ranging survey of over 1,200 tax officials from 138 jurisdictions on MNE behaviour and tax compliance. As the international community prepares for the implementation of a new global minimum tax, the results provide an important snap shot of current levels of trust and transparency—factors that will underpin the success of the new international tax rules.

The survey shows that while MNEs are generally seen to demonstrate a formal commitment to co-operation with tax administrations, notably through on-time payment, perceptions of MNE transparency and trust in the information provided by them are less positive. There are strong regional differences, with tax administrations’ perceptions of MNE behaviour generally poorer in Latin America and the Caribbean, and to a lesser extent Africa, when compared with Asia and OECD countries. The report combines tax administration perceptions of MNEs with previous research on MNE perceptions of tax administrations to identify a range of possible actions to help build more trust and effective relationships between tax administrations and business, with the aim of fostering more responsible business conduct in the tax area. These include increasing accountability for behaviour of both businesses and tax administrations (such as through voluntary principles set out by business and taxpayer charters), supporting the development of co-operative compliance relationships, and more simply focusing on making communication easier to reduce misunderstandings. The report focuses in particular on the challenges faced by developing countries, which are striving to increase revenues to help meet the UN Sustainable Development Goals. With many developing countries being more reliant on both corporation tax and MNEs than other countries, fostering responsible business conduct in the tax area is especially important in developing countries.

European Union

The European Parliament brings the EU digital levy back on the table if Pillar One fails by the end of 2025. Indeed, on 26 August 2022, the European Parliament issued a Draft Opinion requesting the Commission and the Member States to submit a legislative proposal to introduce an “EU Digital Levy” if a “critical mass of countries” does not ratify the Multilateral Convention implementing Pillar One by 31 December 2025. The introduction of the EU digital levy will be part of the new EU-own resources and will fund EU operations if there is a delay in implementing Pillar One. The proposal for an EU Digital Levy will be considered an own resource of the Union, as it was first suggested in July 2021.

A joint statement has been made over BEPS 2.0 by France, Germany, Italy, Netherlands, and Spain. Through the joint statement, those countries renew their commitment to put in place a global minimum effective corporate taxation. The statement was made in the margins of the informal meeting of the Economic and Financial Affairs Council (ECOFIN or the Council) that took place in Prague, Czech Republic on 9-10 September. During their meeting, EU Finance Ministers discussed the development of the European framework for direct taxation to promote economic growth. The statement is illustrative of the wish of Member States to explore ways of cooperating on direct taxation when full unanimity cannot be reached. Investigating such ways of cooperation was an element of the discussion on deepening and diversifying EU cooperation on direct taxation.

On 14 September 2022, the Commission proposed a new Regulation introducing emergency measures to mitigate high energy prices and the risk of supply shortages in Europe (the Regulation). The Regulation includes among others two tax-related measures, targeting companies in the energy sector that the EU considers have benefited disproportionately from the current high energy prices. These measures are:

- A revenue cap to a maximum of €180 per MWh on low-cost electricity generating companies (i.e., those whose production costs are unrelated to the currently high gas prices, such as wind, solar and nuclear producers).
- An EU-wide temporary “solidarity contribution” (effectively a windfall tax) which will be levied at a rate of at least 33% over the “surplus taxable profits” of companies in the oil, gas, coal and refinery sectors.

Angola

Angola and Mauritius have implemented a double taxation agreement that will enter in force in spring 2022. Mauritius gazetted the agreement on 30 August 2022.

Bulgaria

Bulgaria has deposited its instrument of ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting which now covers over 1 820 bilateral tax treaties. It proves the strong commitment to prevent the abuse of tax treaties and base erosion and profit shifting by multinational enterprises. The Multilateral Convention will enter into force on the 1st of January 2023 for Bulgaria.

Denmark

Danish government desires to set up a taxation of dividends paid to foreign states, starting from the 1st of March 2023.

If the proposition is enacted, a withholding tax of 27% will be applicable to dividends paid by Danish companies to foreign states or institutions that are part of foreign states. Through a reclaim procedure, the withholding tax may be reduced to 22% or even lower if provided by a tax treaty.

France

In a recent precedent, the French Administrative Highest Court (“Conseil d’Etat”) has considered that taking exclusively into consideration the evolution of an interest rate reference is not sufficient in order to justify a tax adjustment. The French judge has reminded that should also be taken into account the subsidiary's own interests in benefiting from a cash flow agreement and the circumstances in which the interest rate was fixed.

Germany

The German Federal Government announced their intention to implement Pillar Two rules locally. The announcement comes within their will to reduce the burden of high energy prices on German households and businesses. No more details were provided beside their desire to more forward regardless of the current situation at the EU level in that matter.

Ireland

The Irish Revenue Commissioners have published a guide over the tax deductibility of Digital Services Taxes (DST). Some of those DSTs are deductible in computing income of that trade for Irish corporation tax purposes. This guidance is applicable for DSTs in the following countries: Austria, France, Italy, Kenya, Spain, Turkey, United Kingdom, and India.

Malta

Malta is close to introduce Transfer pricing (TP) rules. The proposed rules set out that:

"A company, in relation to an arrangement to which these rules apply, shall prepare on a timely basis and retain at its registered office such records as may reasonably be required for the purposes of determining whether, in relation to the arrangement, the total income of the company has been ascertained in accordance with the provisions of these rules."

So far, no further guidance is available regarding the level of documentation that is expected to be maintained by those entities that would fall within the scope of the TP rules or by when the documentation is expected to be available.

Poland

A draft legislation implementing changes to the Polish Corporate Income Tax (CIT) law was passed to the Sejm (lower house of Parliament). The draft legislation introduces further changes to transfer pricing obligations related to transactions with tax havens.

The draft legislation proposes simplifications in regard to direct transactions with tax havens. The draft law proposes increases to the materiality thresholds in the case of direct transactions with entities established in a tax haven as follows:

- In the case of financial transactions conducted with entities established in a tax haven – the threshold would be PLN2,500,000, i.e., US$500,000 (instead of the current threshold of PLN100,000, i.e., US$20,000).
- In the case of transactions other than financial transactions – the threshold would be PLN500,000, i.e., US$100,000).

The new legislation is expected to be applied retrospectively since the 1st of January 2021.

Saudi Arabia

Saudi Arabia has published the results of the public consultation related to the modification of Transfer Pricing Bylaws.

Here are some of the issues highlighted by public comments on ZATCA drafts:

- Clarification on whether transactions between resident related parties (100% Saudi owned entities) would also be subject to TP documentation and reporting requirements as this may significantly increase the scope of applicability.

- Guidance applicability of TP reporting requirements on consolidated zakat returns.
- Clarification on whether balance sheet items also need to be reported within the TP Disclosure Form.
- Clarification on whether the same threshold (of SAR6m) for maintaining TP Documentation would apply for zakat payers.
- Corresponding adjustments on related party transactions conducted within Saudi Arabia.
- Clarification on advance pricing agreements, applicability date for compliance for zakat payers and guidance on how potential TP adjustments could be computed for zakat payers.

Switzerland

The Swiss Federal Council has opened a public consultation over an ordinance that will temporarily regulate the material aspect of Pillar Two during a transition phase that should enter in force on the 1st of January 2024.

United Kingdom

The United Kingdom Government has published a draft legislation for new TP documentation requirements. While The UK has CbCR standard requirements applied, there are no requirements to produce a Master nor a Local File. However, according to the British government, the absence of specific TP documentation requirements has created some uncertainty for UK businesses.

The draft legislation has a purpose of introducing the preparation of both master and local file. Moreover, an audit trail, in a form of a questionnaire, will also need to be prepared by MNEs. The audit trail should give details related the main actions undertaken by the business in preparing the Local File.

United States

The United States' Internal Revenue Service (IRS) continue to seek to improve the quality of transfer pricing documentation received from taxpayers. Therefore, the IRS will apply more penalties if necessary, hoping that taxpayers will provide better TP documentation reports. As a reminder, the 20% penalty of the underpayment of tax attributable to the substantial valuation misstatement can be reduced if the taxpayer sues a regulatory specified method to define the transfer price and has a documentation to support the selection of the price within 30 days from an IRS request.

On 16 August 2022, President Biden signed into law the Inflation Reduction Act (IRA).

Among amongst other measures introduced by the law is a minimum corporate tax of 15 per cent applicable from 2023 to companies with profits in excess of us$1 billion. However, this 15 per cent tax would only apply to companies' book income and would coexist with the 10.5 per cent rate introduced in 2017 under the GILTI regime. This leaves a gap between the OECD model rules and the global minimum tax as planned by the United States, which would therefore only be a partial implementation of Pillar 2.

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